



6-6-500, as amended and Rule 65 of the Alabama Rules of Civil Procedure;

3. Issuance of a writ of certiorari;
4. Issuance of a writ of mandamus; and
5. Any other relief to which the Plaintiff may be entitled under the laws of the State of Alabama.

### **PARTIES**

6. The Baldwin County Board of Education is a county board of education, a body politic of the State of Alabama, with its principal place of business in Baldwin County, Alabama.

7. Mackey is over the age of nineteen (19) years of age and serves as the State Superintendent of Education. In said role, Mackey serves as the Secretary and Executive Officer of the Alabama State Board of Education, the governing body of the Alabama State Department of Education, an agency of the State of Alabama, with its principal place of business in Montgomery, Montgomery County, Alabama.

8. The Gulf Shores City Board is a city board of education, a body politic of the State of Alabama, with its principal place of business in Gulf Shores, Alabama.

9. Baldwin County, Alabama is a county organized and existing under the laws of the State of Alabama, Alabama Code (1975) § 11-1-1 et. seq., and the Baldwin County Commission exists under the laws of the State of Alabama with its principal place of business in Baldwin County, Alabama, and exercises governmental authority in Baldwin County, Alabama in accordance with applicable state law. The Baldwin County Commission is joined in this action as a necessary party for just adjudication of this matter; however, no claims are asserted against the Baldwin County Commission other than Count

II.

### **JURISDICTION AND VENUE**

10. The Baldwin County Board of Education seeks, among other things, declaratory, injunctive, and equitable relief. This Honorable Court possesses and is entitled to exercise jurisdiction over the subject matter of this action pursuant to §§ 6-6-223, 12-11-31, and 12-11-33 of the Code of Alabama (1975).

11. Pursuant to §§ 6-3-2 and 6-3-6 of the Code of Alabama (1975) and Rule 82 of the Alabama Rules of Civil Procedure, venue is proper in Baldwin County, Alabama.

### **FACTS**

12. The case and controversy submitted to the Court in this matter pertain to the separation of the Gulf Shores City School System from the Baldwin County Public School System.

13. On October 9, 2017 the Gulf Shores City Council unilaterally voted to form a city school system. Interestingly, this decision was not submitted to the citizens of Gulf Shores for their approval. Plaintiff has never disputed the validity of the formation of this City School System.

14. On December 4, 2017, the first Gulf Shores City Board of Education members were sworn into office.

15. Shortly afterwards, representatives from both school systems began negotiations in an attempt to enter into an agreement regarding the split.

16. Initially, Gulf Shores insisted upon July 1, 2018 separation date which was unacceptable to the Baldwin County Board of Education.

17. As a result of an impasse regarding the separation date, the then-Interim State Superintendent, Dr. Ed Richardson, requested that the parties meet with him on March 13, 2018 in Montgomery, Alabama.

18. On April 20, 2018, Dr. Richardson issued a decision which stated that the start of the Gulf Shores School System would be the 2019/2020 school year.

19. On July 25, 2018, at the request of the current State Superintendent of Education, Dr. Eric Mackey, the parties again met in Montgomery. At that time, Mackey informed the parties that he had retained the law firm of Adams & Reese LLP, to act as facilitators to assist the parties in an attempt to reach an agreement on separation.

20. The parties met with attorneys Mark Gaines and Anna Davis of Adams & Reese on two separate occasions but no agreement was reached.

21. Through counsel, the Baldwin County Board of Education requested an additional meeting on three separate occasions. No additional meeting ever took place.

22. On October 8, 2018, the parties received a communication from Mr. Gaines urging the parties to: “make a deal.” In particular, his communication stated as follows: “If you end up leaving all the issues to the State Superintendent you can almost guarantee that there will be wailing and gnashing of teeth on both sides.”

23. At the request of Dr. Mackey, the parties met with him on December 14, 2018.

24. On December 20, 2018, Dr. Mackey sent the respective superintendents his “Preliminary Decision Related to the Separation Issues Between the Gulf Shores Board of Education and the Baldwin County Board of Education.” (hereinafter “Preliminary Decision” attached as Exhibit 1).

25. In a cover letter accompanying this Preliminary Decision, Mackey instructed both Superintendents to: “make any and all efforts necessary to complete the final agreement on or before January 18, 2019.”

26. On January 17, 2019, the Baldwin County Board of Education objected to the Preliminary Decision and declined to sign the separation agreement for a variety of reasons, including but not limited to the fact that Mackey’s demands were inconsistent, in many respects, with applicable Alabama law.

27. On February 5, 2019, Mackey issued a final decision related to the separation issues. (hereinafter “Decision” attached as Exhibit 2).

28. Included in his Decision were the following statements:

I therefore direct the superintendent for each system to provide my office with a written response to this decision, to be received by my office no later than February 15, 2019, in which each superintendent confirms his acceptance of this decision as final and binding and his commitment to begin implementing this decision immediately. If no written response confirming compliance is received by that date, this office will understand that lack of response as a refusal to accept this decision as binding and will proceed accordingly under the enforcement authority granted by Section 16-4-4 of the Alabama Code.

29. Section 16-4-4 of the Code of Alabama (1975) reads as follows:

The State Superintendent of Education shall explain the true intent and meaning of the school laws and of the rules and regulations of the State Board of Education. He shall decide, without expense to the parties concerned, all controversies and disputes involving the proper administration of the public school system. The State Superintendent of Education shall enforce all the provisions of this title and the rules and regulations of the State Board of Education. ***He shall file charges with the State Board of Education or other controlling authority and shall recommend for removal or institute proceedings for the removal of any person appointed under the provisions of this title for immorality, misconduct in office, insubordination, incompetency or willful neglect of duty.***

30. Mackey has apparently attempted to clarify this portion of his Decision. If any action is instituted by the Mackey against the Baldwin County Superintendent of Education, however, the Baldwin County Board of Education will promptly seek a temporary restraining order from this Court.

## **COUNT I**

### **DECLARATORY JUDGMENT**

#### **ENFORCEMENT OF Ala. Code §§ 16-13-230 and 16-13-231**

31. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 30 as if fully set forth herein.

32. There exists a justiciable controversy between the Baldwin County Board of Education and the Defendants concerning the date upon which the Gulf Shores City Board is entitled to receive Foundation Program funding.

33. This Court has jurisdiction of this Count under the laws of the State of Alabama.

34. As stated above, on February 5, 2019, the State Superintendent issued his Decision in connection with the separation of the Gulf Shores City school system from the Baldwin County Board of Education.

35. The State Superintendent includes therein, provisions purporting to order that the State Department of Education will “divide the Foundation Program allocation to Baldwin County and will apportion and pay over to the [Gulf Shores] City Board, as the City Board’s share for that month, an amount determined by the SDE with reference to an equivalent number of certified positions based on Fiscal Year 2019-2020 ADM calculations and corresponding funding divisors.”

36. Such an order is contrary to the law.

37. Employee contract periods run from September 1 through August 31, a school calendar year. Foundation Program Funds are distributed beginning on October 1 through September 30, a fiscal calendar year. Thus, the Baldwin County Board of Education has acknowledged that it is responsible for paying all current Gulf Shores employees through the end of their 2018-2019 contract period (for 9-month employees, that period ends on August 31, 2019).

38. It cannot be disputed that the Gulf Shores City Board is responsible for its own payroll obligations for the 2019-2020 school contract year, which for 9-month employees will begin on September 1, 2019 and end on August 31, 2020. Mackey's decision orders the Baldwin County Board of Education to agree to provide a portion of its already allocated Foundation Program Funds to the Gulf Shores City Board for the month of September, 2019. In other words, the State Superintendent's decision orders the Baldwin County Board of Education to pay a portion of the Gulf Shores City Board's payroll obligations for the 2019-2020 school contract year.

39. Alabama law specifically directs that money from the Foundation Program Fund be paid to local boards of education each month in amounts determined solely by the Alabama Legislature.

40. Specifically, Pursuant to Sections 1 and 2 of Act No. 95-314, as amended (now codified as Sections 16-13-230 and 16-13-231 of the Code of Alabama (1975), the Alabama Legislature has established the Foundation Program Fund as a fund for the public schools of the State and has specifically provided for the apportionment and payment of public school money from the Fund to those local boards of education which meet the

qualifications therefor as follows:

- (a) The Alabama Legislature shall find and determine the cost of the Foundation Program on a school-by-school, and fiscal year, basis (Section 16-13-231(b)(2));
- (b) The funds available to meet the cost of the Foundation Program shall be appropriated by the Alabama Legislature taking into consideration an amount of local effort required on the part of each local board of education (Section 16-13-231(b)(3)(a);
- (c) The amount for each school shall be paid monthly to the local board of education having jurisdiction over such school (Section 16-13-231(b)(3)(b)); and
- (d) The local board of education shall allocate funds from the Foundation Program Fund to each school in an equitable manner and as provided by law, and shall report such allocations annually to the State Board of Education (Section 16-13-231(b)(1)(d)).

41. The State Superintendent of Education is required by law to make the annual apportionment of school funds to the local boards of education as provided in Title 16 of the Code of Alabama (1975) (Section 16-4-5).

42. The State Board of Education, and the State Superintendent of Education, have no authority in Title 16 of the Code of Alabama (1975) to:

- (a) determine the cost of the Foundation Program for any school, or
- (b) determine the amount of any funds from the Foundation Program Fund to be apportioned and paid to a local board of education, or
- (c) direct the allocation of the funds received by a local board of education from the Foundation Program Fund.

43. Under Section 16-13-231(b)(2)(e) of the Code of Alabama, the State Board of Education may cause studies to be made of current expenses of local boards of education and propose changes based thereupon to the Governor and the Alabama Legislature, but the Alabama Legislature has made specific provision for the apportionment and payment of funds from the Foundation Program Fund to local boards of education.

44. In addition, in accordance with principles of Alabama law, and In re Opinion of the Justices, 160 So.2d 648, the general authority of the State Superintendent of Education to decide controversies and disputes involving the proper administration of the public schools under Section 16-4-4 of the Code of Alabama (1975) does not include the authority to exercise the power to make or revise the apportionment of funds from the Foundation Program Fund to a local board of education, as made by the Alabama Legislature for a fiscal year, which power the Legislature has specifically reserved unto itself for the benefit of local boards of education.

45. In regards to a city school splitting from a county school system, the State Department of Education, by letter dated June 12, 2000, has previously found that a “school year is July 1 through June 30, and the State fiscal year is October 1 through September 30. A new school system does not receive a monthly Foundation Program payment *until the end of October*. The city would most likely need to provide funds for salaries and school operations from July *through September*, as well as any cost prior to July 1.” See Letter to Eugene, attached as Exhibit 3.

46. The foregoing is further evidenced by the letter of Thomas R. Bice, State Superintendent of Education, dated February 6, 2015, providing: “By creating a separate school system, the Gardendale City Board assumed the obligation of paying the salaries and benefits of its employees, and it is not entitled to any portion of 2015 Foundation Program funds paid to the Jefferson County Board.” See Letter of Thomas R. Bice, attached as Exhibit 4.

47. Every school system in Alabama must locally fund all state earned payroll obligations until Foundation Program funds are available during the October 1 fiscal year. Generally accepted accounting principles (GAAP) require all school systems to record a payroll salary liability as of September 30 until those funds are legally available in October. At the time

of its decision to split, the Gulf Shores City School was well aware that start-up funds from the City would be required and that, as a new school system, it would not receive a monthly Foundation Program payment until the end of October.

48. By way of example, as a direct result of the split, the Baldwin County Board of Education will be required to create a new 7th – 10th grade facility with substantial start-up costs, including covering the September payroll obligations for the 40 additional countywide teacher units based on growth. No one is covering the large start-up cost and September payroll obligation for the Baldwin County Board of Education.

Under the State Superintendent's directive, the Baldwin County Board of Education will be forced to cover its own September payroll obligations as well as front the start-up cost for the Gulf Shores City Board's payroll obligations for the 2019-2020 school calendar contract period.

49. Accordingly, the Plaintiff asserts that it is not equitable and in contravention of applicable law for the State Superintendent to order that any portion of the Baldwin County Board of Education's Foundation Program funds through the end of the current fiscal year, ending September 30, 2019, or the Baldwin County Board of Education pay for the Gulf Shores City Board's September payroll out of Foundation funds. Such amounts are determined solely by the Alabama Legislature.

50. A justiciable controversy exists between the Plaintiff and the Gulf Shores City Board concerning whether the Gulf Shores City Board is entitled to any portion of Foundation funds through the end of the current fiscal year.

51. A justiciable controversy exists between the Plaintiff and the State Superintendent concerning the laws of the State of Alabama, including, but not limited to, §§ 16-13-230, 16-13-231, and 16-4-4, and whether the State Superintendent has any authority to exercise the power to

make or revise the apportionment of funds from the Foundation Program Fund to a local board of education for a fiscal year.

52. A justiciable controversy exists between the Plaintiff and the State Superintendent as to whether he has the power and authority to direct Foundation Program Funds be distributed in the manner described in his final decision, and whether his conduct is without legal authority and precedent, and is arbitrary and capricious.

53. This Honorable Court possesses jurisdiction under the laws of the State of Alabama to issue a respect to the rights privileges and entitlements of the parties relative to the provisions of §§ 16-13-230, 16-13-231 and 16-4-4 of the Code of Alabama (1975).

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education respectfully moved this Honorable Court to enter a declaratory judgment relative to the rights and privileges of the Plaintiff under §§ 16-13-230, 16-13-231, and 16-4-4 of the Code of Alabama (1975) and grant any additional and further relief that the Plaintiff may be entitled to in this cause, including, but not limited to:

- (a) A specific declaration that §§ 16-13-230 and 16-13-231 do not contemplate diverting Baldwin County Board of Education Foundation Funds to the Gulf Shores City Board during the current fiscal year;
- (d) A specific declaration that the Alabama Legislature constitutes the sole government entity authorized under §§ 16-13-230 and 16-13-231 to make or revise the apportionment of funds from the Foundation Program Fund for the benefit of local boards of education;
- (e) A specific declaration that any designation made by the State Superintendent that includes that the Gulf Shores City Board receive an apportionment of the Baldwin County Board of Education's Foundation Program Funds during the current fiscal year is null and void pursuant to Alabama Code (1975) §§ 16-13-230 and 16-13-231;
- (f) A specific declaration that the State Superintendent lacks the power and authority under § 16-4-4 to direct the apportionment of Foundation Program Funds set out in his final decision, which is contrary to §§ 16-13-230 and 16-13-231; and/or other established Alabama law(s); and

- (g) Any and all further and different relief to which the Plaintiffs maybe entitled to in this cause.

## **COUNT II**

### **DECLARATORY JUDGMENT**

#### **ENFORCEMENT OF ALABAMA CODE (1975) §§ 16-13-31(b) and 40-12-4**

54. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 53 as if fully set forth herein.

55. There exists a justiciable controversy between the Baldwin County Board of Education and the Defendants concerning the date upon which certain sales, use and privilege tax revenue is due to be apportioned between the Baldwin County Board of Education and the Gulf Shores City Board.

56. This Court has jurisdiction of this Count under the laws of the State of Alabama.

57. On or about February 5, 2019, the State Superintendent issued his Decision in connection with the separation of the Gulf Shores City school system from the Baldwin County Board of Education.

58. The State Superintendent includes therein, provisions purporting to govern the date upon which certain sales, use and privilege tax revenues in Baldwin County are to be apportioned between the Baldwin County Board of Education and the Gulf Shores City Board.

59. The taxes at issue are: (a) the countywide one-half percent sales and use tax levied by the Baldwin County Commission on December 20, 1988; (b) the countywide one-half percent sales and use tax levied by the Baldwin County Commission on June 6, 1991; and (c) the countywide one percent sales and use tax levied by the Baldwin County Commission by Resolution 2017-046. (collectively, hereinafter referred to as the "Sales Tax").

60. Specifically, the State Superintendent has purported to order the allocation,

apportionment, and distribution of a portion of the Sales Tax beginning on June 1, 2019.

61. Such an order is contrary to Alabama law.

62. Alabama Code (1975) § 40-12-4 grants the governing body of each county the authority to levy sales tax for school purposes. Specifically, it states, in part, that “[i]n all counties having more than one local board of education, revenues collected under the provisions of this section shall be distributed within such county on the same basis of the total calculated costs for the Foundation Program for those local boards of education within the county.”

63. The Foundation Program funds from which the calculated costs are figured, as well as the date of participation, are linked directly to the October 1 through September 30 fiscal year.

64. By way of background, the Foundation Program was established by Act No. 95-314 of the 1995 Regular Session of the Alabama Legislature (“Act No. 95-314”) to implement a comprehensive program for the annual funding of the local public schools of the State.

65. The related provisions of Act No. 95-314 provide a coherent statutory framework for the operation of the accounting and budgetary systems of local boards of education on the basis of a “fiscal year” beginning each October 1 and ending on the next succeeding September 30, and provide for the apportionment of countywide school taxes on October 1 for the purposes of the Foundation Program for the fiscal year beginning on such date:

- (a) Section 2 of Act No. 95-314 (codified as Section 16-13-231 of the Code of Alabama (1975)) establishes the Foundation Program;
- (b) Section 19 of Act No. 95-314 (codified as Section 16-13-31(b) of the Code of Alabama (1975)) requires the tax collector/revenue commissioner of each county to apportion countywide school taxes to each local board of education in the county on the basis of the total calculated costs of the Foundation Program as determined pursuant to Section 2(b)(3)(a) of Act No. 95-314 (codified as Section 16-13-231(b)(3)(a) of the Code of Alabama (1975)), which provides the part of the costs of the Foundation Program constituting the required local effort of each local board of

education must be determined on a fiscal year basis; and

- (c) Section 51 of Act No. 95-314 (codified as Section 40-12-4 of the Code of Alabama (1975)) requires proceeds of the countywide privilege license taxes levied thereunder to be distributed to the local boards of education in a county on the same basis as of the total calculated costs of the Foundation Program.

66. In accordance with the above, Alabama law directly addresses the division of taxes solely based on the fiscal year, not on the date of separation of two school systems.

67. An apportionment of all countywide school taxes as of October 1 in each year is consistent with the fiscal year basis for the financial operation of local boards of education established by Act No. 95-314, the historic and uniform practice in the State for apportionment of countywide school taxes, and the standard accounting and budgetary systems established by law for local boards of education in the State under Article 7 of Chapter 13 of Title 11 of the Code of Alabama (1975).

68. In addition, Alabama Code (1975) § 16-13-31(b) states in part, “the apportionment of countywide taxes collected for the purposes of participation in the Foundation Program as determined in Section 16-13-31(b) shall be used unless the local boards of education in a county sign a mutual agreement and secure the approval of the State Superintendent of Education to use some other plan involving desirable special adjustments.”

69. Thus, the only limited exception to the fiscal year distribution would be based upon a mutual agreement between both boards of education along with the State Superintendent’s approval, which currently does not exist and cannot be ordered by the State Superintendent.

70. Additionally, under Alabama Code (1975) § 16-13-1, the “fiscal year” of every board of education “shall begin on October 1 and end September 30,” and the State Department of Education, by letter dated June 12, 2000, has found that “a new school system would require

start-up funds from the city. The school year is July 1 through June 30, and the State fiscal year is October 1 through September 30. A new school system does not receive a monthly Foundation Program payment until the end of October. The city would most likely need to provide funds for salaries and school operations from July through September, as well as any cost prior to July 1.”

71. Finally, the Baldwin County Board of Education has pledged the Sales Tax for local debt obligations through the end of the current fiscal year, being September 30, 2019. The debt obligations are directly aligned with the Gulf Shores City Board’s debt assumptions, which are directly correlated to the outstanding balance as of October 1, 2019.

72. The division of local countywide taxes within a time frame that does not correlate with the assumption of capital debt would be a reportable item to all nationwide credit agencies and holders of Baldwin County Board of Education bonds. This act has the potential to result in an adverse credit rating for the Baldwin County Board of Education, which can negatively impact future debt issuances. Accordingly, the Plaintiff asserts that it is not equitable or in accordance with applicable law for the State Superintendent to order for the division of local taxes to start on June 1, 2019, when the obligations of over \$10 million in principal and interest payments is not assumed by the Gulf Shores City Board until October 1, 2019.

73. The Plaintiff avers that Alabama Code (1975) §§ 16-13-31(b) and 40-12-4 contemplate distributing tax revenues only to the local boards of education in accordance with the fiscal year, absent an agreement between both school systems. In addition, there is no applicable authority which separates countywide taxes on any other basis other than the fiscal year.

74. The Plaintiff avers that the apportionment of countywide school taxes on any date or dates in advance of the beginning of a fiscal year on October 1, in connection with the establishment of a local board of education within the jurisdiction of an existing local board of education:

- (a) creates a loss of revenues and disrupts existing budgetary allocations of funds for the existing board, thus resulting in an inequitable apportionment of countywide school taxes;
- (b) is inconsistent with the provisions and purposes of Act No. 95-314, which established the Foundation Program as part of a comprehensive program for the annual funding of the local public schools of the State;
- (c) is inconsistent with the standard accounting and budgetary systems established by law for local boards of education;
- (d) is inconsistent with the historic and uniform practice of apportionment of countywide school taxes in the State; and
- (e) creates uncertainty as to the timing of distributions of funds in future establishments of local boards of education.

75. An equitable apportionment of countywide school taxes by the tax collector/revenue commissioner in each county can be made in accordance with Section 2 of Act No. 95-314 (codified as Section 16-13-31(b) of the Code of Alabama (1975)) only if such apportionment is made:

- (a) pursuant to the same formula, being the total calculated costs of the Foundation Program; and
- (b) at the same time, as of October 1 in each year, being the beginning of the applicable fiscal year. The Plaintiff avers that a failure to file this action will result in the improper diversion of funds to the Gulf Shores City Board.

76. A justiciable controversy exists between the Plaintiff and the Baldwin County Commission concerning the laws of the State of Alabama, including whether the County Commission has a legal duty under § 16-13-31(b) to distribute the countywide Sales Tax levied

and collected for the benefit of the Baldwin County Board of Education for the 2018-2019 fiscal year in the manner dictated by the State Superintendent, to include distribution of the Sales Tax pursuant to Section 40-12-4 to the Gulf Shores City Board beginning on June 1, 2019, or whether the County Commission should distribute the Sales Tax revenues to the local school boards located within the county beginning on October 1, 2019.

77. A justiciable controversy exists between the Plaintiff and the Gulf Shores City Board concerning the proper date for apportionment of the Sales Tax.

78. A justiciable controversy exists between the Plaintiff and the State Superintendent concerning the laws of the State of Alabama, specifically §§ 16-13-31(b), 40-12-4, and whether such distributions and divisions must be made based solely on the fiscal year, absent an agreement between both local boards.

79. A justiciable controversy exists between the Plaintiff and the State Superintendent as to whether he has the power and authority to direct Sales Tax revenues be distributed in the manner described in his final decision, and whether his conduct is without legal authority and precedent, and is arbitrary and capricious.

80. This Honorable Court possesses jurisdiction under the laws of the State of Alabama to issue a respect to the rights privileges and entitlements of the parties relative to the provisions of §§ 16-13-31 and 40-12-4 of the Code of Alabama (1975).

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education respectfully move this Honorable Court to enter a declaratory judgment relative to the rights and privileges of the Plaintiff under §§ 16-13-31 and 40-12-4 of the Code of Alabama (1975) and grant any additional and further relief that the Plaintiff may be entitled to in this cause, including, but not limited to:

- (a) A specific declaration that §§ 16-13-31 and 40-12-4 do not allow diverting Baldwin County, Alabama tax revenues to the Gulf Shores City Board, prior to October 1, 2019;
- (d) A specific declaration that the Baldwin County Commission constitutes the sole government entity authorized under §§ 16-13-31 and 40-12-4 to distribute the proceeds from countywide Sales Tax and the sole government entity responsible for determining the appropriate division of such proceeds among the local boards of the county;
- (e) A specific declaration that any designation made by the State Superintendent that includes that the Gulf Shores City Board receive an apportionment of the countywide Sales Tax distribution percentages in Baldwin County, Alabama prior to October 1, 2019 is null and void;
- (f) A specific declaration that the State Superintendent lacks the power and authority to direct the distribution of tax revenues in the manner set out in his Decision, which is contrary to §§ 16-13-31 & 40-12-4; and/or other established Alabama law(s);
- (g) Injunctive relief on behalf of the Plaintiff Ordering that the Baldwin County Commission shall hold all funds designated for the Gulf Shores City Board in escrow until such time as this controversy can be resolved either by agreement of the parties or by further Order of this Honorable Court; and
- (h) Any and all further and different relief to which the Plaintiffs maybe entitled to in this cause.

### **COUNT III**

#### **DECLARATORY JUDGMENT**

#### **ENFORCEMENT OF ALABAMA CODE (1975) § 16-4-4 and § 16-4-8 in relation to**

#### **STUDENT ASSIGNMENT AND TRANSPORTATION**

81. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 80 as if fully set forth herein.

82. On or about February 5, 2019, the State Superintendent issued his Decision in connection with the separation of the Gulf Shores City school system from the Baldwin County Board of Education.

83. The State Superintendent includes therein provisions purporting to govern the assignment and transportation of students under certain circumstances.

84. Specifically, the State Superintendent has ordered the following:

- (a) Certain Gulf Shores Students currently enrolled in various specialized programs may remain in the County System until completion of their public school educational program, including but not limited to the County's IB program and the County's career technical school;
- (b) Certain County Students may participate in the Naval JROTC program located at Gulf Shores High School;
- (c) All eleventh and twelfth grade students residing in the Gulf Shores Feeder Patterns during the 2019-2021 school years shall attend Gulf Shores High School until their graduation or completion of their public school educational program;
- (d) All rising 10th grade Baldwin County Students currently residing in the Gulf Shores Feeder Pattern shall choose whether to attend Gulf Shores through their graduation; and
- (e) Any rising 10th grade Baldwin County Student who wishes to attend the Gulf Shores Schools had to declare their intent to attend by February 1, 2019, subsequently extended by the State Superintendent to March 1, 2019 or such student shall be considered to have elected to remain in the Gulf Shores City Schools and shall be counted as such for all State Department of Education ("SDE") Fiscal Year 2019-2020 financial calculations related to daily attendance.

85. In a special called meeting on January 17, 2019, the Gulf Shores City Board took action to authorize student attendance similar in substance to the provisions set forth in the preceding paragraph, the only material difference being that the State Superintendent's decision modifies the 10th grade declaration date.

86. Under Section 16-4-4 of the Code of Alabama (1975), the State Superintendent is given authority to explain the true intent and meaning of the school laws and of the rules and regulations of the state board of education. Under such authority, the State Superintendent shall decide, without expense to the parties concerned, all controversies and disputes involving the

proper administration of the public school system.

87. Under Section 16-4-8 of the Code of Alabama (1975), the State Superintendent is given the authority to “review actions of the county and city school boards and of county superintendents of education and city superintendents of schools in matters relating to finance and other matters seriously affecting the educational interest.”

88. While the State Superintendent of Education has been granted broad general authority, that authority is not unlimited, nor is it plenary. The authority to exercise general control and supervision over a county board of education does not include the authority to exercise the powers and authority which the Legislature has specifically conferred upon local boards of education.

89. The Alabama Legislature has specifically defined and designated the responsibilities of a county board of education in regards to compulsory school attendance and attendance districts. For example, in Alabama Code (1975) § 16-8-34, the Legislature provided that the county board of education shall arrange the county into one or more appropriate and convenient compulsory school attendance districts, and the board is directed to keep “full and complete records of the boundaries” of each compulsory attendance district.

90. The Alabama Legislature has further authorized local boards of education to regulate the admission of students to their schools in Alabama Code (1975) § 16-28-3 and to collect fees from students attending schools in a jurisdiction other than the jurisdiction of the student’s residence in § 16-10-6. Specifically, § 16-10-6 authorizes a board to fix and collect tuition fees or charges from pupils attending schools under the jurisdiction of a local board but who live outside the territory over which such boards have jurisdiction. Implicit in Section 16-10-6 is the understanding that a child may attend a school outside the school of the child’s

residence, and courts have held that there is no statutory authority for requiring children who live within a city to attend a city, rather than a county, school. Phenix City Bd. of Educ. v. Teague, 515 So.2d 971 (Ala. Civ. App. 1987).

91. In addition, the State Department of Education has given local boards of education the responsibility of adopting policies of admission within the framework of state law and the State Board of Education. Ala. Admin. Code § 290-3-1-.02(7).

92. In accordance with applicable law, the State Superintendent of Education has no authority to place, assign and/or transfer pupils from one public school to another public school within a city or county school system. Further, in accordance with applicable law, the State Superintendent of Education has no authority to determine admission criteria for pupils within the public school systems of the State. All such authority is expressly given to local boards of education.

93. By Resolution dated January 15, 2019, the Baldwin County Board of Education took the following actions in connection with the student attendance issue:

“Fall 2019 - all eleventh and twelfth grade students in the current Gulf Shores High School feeder pattern will be assigned to Gulf Shores High School.

Fall 2019 - Kindergarten through ninth grade students:

- Kindergarten through ninth grade students residing within the corporate limits of Gulf Shores will attend GSBE schools.
- Kindergarten through ninth grade students residing outside the corporate limits of Gulf Shores shall attend BCBE schools as assigned by the BCBE.
- Fall 2019 - tenth grade students who reside in the current Gulf Shores High School feeder pattern but outside the corporate limits of Gulf Shores will be given their choice of attending Gulf Shores High School or another high school option provided by the BCBE.”

94. To the extent that the actions of the Baldwin County Board of Education concerning student attendance are consistent with the actions of the Gulf Shores City Board, the

two boards have acted within the authority granted to them by Alabama law, and those areas of commonality will govern student attendance and the assignment of students between the Baldwin County Board of Education and the Gulf Shores City Board.

95. To the extent that the State Superintendent purports to make decisions concerning student attendance and the assignment of students between the Baldwin County Board of Education and the Gulf Shores City Board that are different than the areas of commonality between the two boards, such actions are without legal authority and have no force or effect.

96. Next, the State Superintendent of Education has issued directives to the Baldwin County Board of Education regarding the transportation of students outside the Baldwin County School System's attendance zones.

97. Specifically, the State Superintendent purports to direct the Baldwin County Board of Education to transport all County Students that attend the Gulf Shores City Schools pursuant to Section 2.C.iv. of the State Superintendent's decision.

98. While the State Superintendent may have general authority to review matters under § 16-4-4 and § 16-4-8, that authority does not include the authority to direct and control the transportation of pupils. *See In re Opinion of Justices*, 160 So.2d 648 (1964).

99. The legislature has delegated to county and city boards of education broad powers to effectively administer and supervise the public schools and to establish educational policies that are in the best interests of the schoolchildren of Alabama. *See Alabama Code* (1975) §§16-8-8 and 16-11-9.

100. Citing to the specific authority of local boards to oversee the day-to-day operation of schools and assignment of pupils to particular schools, courts have held that it is reasonable to infer that the Legislature intended that the matter of transportation of pupils should come under

the control and authority of the county boards of education. In re Opinion of the Justices, 160 So.2d at 650.

101. Courts have stated that they have no general supervisory power over transportation of school children by boards of education, and courts will not ordinarily seek to control exercise of broad discretion given by statute to boards. Ex parte Perry County Bd. of Educ., 180 So.2d 246 (1965).

102. In addition, county boards of education are specifically given the authority to arrange for the transportation of pupils to and from *consolidated* schools under Alabama Code (1975) § 16-8-1. Further, under a county board's general power to contract outlined in Alabama Code (1975) § 16-8-40, a county board of education may adopt a policy of contracting with individuals to transport school children. Shores v. Elmore County Bd. of Educ., 3 So.2d 14 (Ala. 1941).

103. Where transportation of pupils to a consolidated school is not involved, and there has been no agreement between two school systems as to the acceptance and transportation of pupils into the school system in which they do not reside, however, state law does not make it mandatory upon county boards of education to furnish transportation to pupils beyond their territorial limits. Ex Parte Perry County Bd. of Educ., 180 So.2d 246, 249 (1965).

104. Further, not only have courts found no duty to provide transportation, but courts have further outlined that a county board has no lawful warrant to furnish such transportation in the absence of an agreement between the systems. Id. at 249, *citing to* Conecuh County Bd. of Educ. v. Campbell, 162 So. 2d 233.

105. Finally, the State Board of Education has recognized the authority of local school systems to determine how state funds for transportation are allocated for children who reside in

one school system and choose to attend another school system. According to State Board of Education resolution entitled “Transportation,” adopted on July 22, 1976, the State Board of Education has ruled that “no school system may transport children who reside in another school system without the mutual consent of both systems involved” and that “no funds are to be paid from the State level for children transported from one system to another system, without the *mutual consent* of both systems involved or unless directed by court order.” (emphasis added).

106. In accordance with applicable law, the State Superintendent of Education has no authority under §§ 16-4-4 or 16-4-8 to dictate the responsibility of transportation between two public school systems. As outlined above, transportation matters are left to the authority of the local boards.

107. There exists a justiciable controversy between the Baldwin County Board of Education and Defendant Mackey and Gulf Shores City Board concerning the Baldwin County Board of Education’s right to determine student assignment and attendance zones, student admission, and student transportation.

108. This Honorable Court possesses jurisdiction under the laws of the State of Alabama to issue a declaratory judgment with respect to the rights privileges and entitlements of the parties relative to the respective authority of the parties related to student assignment and attendance zones, student admission, and student transportation as described herein.

109. A failure to file this action will result in the unlawful exercise of authority by the State Superintendent in matters concerning student assignment and attendance zones, student admission, and student transportation that Alabama law vests in the authority of the Baldwin County Board of Education.

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education, respectfully moves this Honorable Court to enter a declaratory judgment relative to the rights and privileges of the Plaintiffs under §§ 16-4-4 and 16-4-8 of the Code of Alabama (1975) and grant any additional and further relief that the Plaintiffs may be entitled to in this cause, including, but not limited to:

- (a) A specific declaration that §§ 16-4-4 and 16-4-8, does not include the authority to exercise the powers and authority which the Legislature has specifically conferred upon boards.
- (b) A specific declaration that the Legislature has specifically conferred upon local boards of education the authority to place, assign, and transfer pupils from one public school to another public school;
- (c) A specific declaration that the Legislature has specifically conferred upon local boards of education the authority to regulate admission of students to their schools;
- (d) A specific declaration that the Legislature has conferred upon local boards of education the authority to direct and control the transportation of students to and from public schools;
- (e) A specific declaration that the State Superintendent lacks the authority to issue directives regarding student assignments, student admissions, and student transportation;
- (f) A specific declaration that any final decision made by the State Superintendent under Alabama Code (1975) §§ 16-4-4 or 16-4-8, that includes a directive regarding student assignments, student admissions, and student transportation is null and void;
- (g) Injunctive relief on behalf of the Plaintiffs ordering that the State Superintendent's final decision regarding student assignments, student admission, and student transportation shall have no full force and effect until such time as this controversy can be resolved either by agreement of the parties or by further Order of this Honorable Court; and
- (h) Any and all further and different relief to which the Plaintiffs maybe entitled to in this cause.

**COUNT IV**  
**DECLARATORY JUDGMENT**  
**ENFORCEMENT OF ALA. CODE § 16-4-4 and § 16-4-8 in relation to**  
**SCHOOL PERSONNEL**

110. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 109 as if fully set forth herein.

111. On or about February 5, 2019, the State Superintendent issued what he has designated as his “final decision” in connection with the separation of the Gulf Shores City school system from the Baldwin County Board of Education.

112 The State Superintendent includes therein provisions purporting to govern the assignment of personnel under certain circumstances.

113. Specifically, the State Superintendent has included the following: “In addition to transfer requests, normal attrition through retirements, resignations, and non-renewals may alleviate some pressure for teacher limits and personnel. With respect to Gulf Shores Middle and High schools only, after choice and normal attrition, if there remains a statistical disparity between the pro rata shares assigned to either the CITY BOARD or the COUNTY BOARD, the teachers shall be awarded their school system of choice in order of seniority until the respective pro rata shares are achieved. Seniority shall be defined by total amount of years consecutively employed with the COUNTY BOARD. Any other remaining personnel not contemplated herein shall be treated as addressed above. In the event transfer requests and normal attrition does not rectify the statistical disparity between the pro rata shares of teachers between the two Boards by April 1, 2019, the process for allowing choice by seniority shall begin no later than April 15, 2019. The State Superintendent lacks authority to take the foregoing action.”

114. While the State Superintendent operates under certain general grants of authority, such as Alabama Code (1975) §§ 16-4-4 and 16-4-8, he lacks authority to take the specific actions set forth in the preceding paragraph, as those specific grants of authority, in this instance, are vested in the Baldwin County Board of Education.

115. It is a well settled principle of law that the more specific grant of authority controls over the more general grant of authority.

116. In this area, the Alabama Legislature has specifically defined and designated the responsibilities of a county board of education in regards to personnel management. For example, in Alabama Code (1975) § 16-1-30(b), the Legislature provided that a county board of education shall determine its own written educational policy for the board and its employees and “shall prescribe rules and regulations for the conduct and management of schools.”

117. Further, under Alabama Code (1975) §16-8-8, a county board of education is vested with the “general administration and supervision of schools in its county.” Specifically, under Alabama Code (1975) § 16-8-23, a county board of education is vested with the authority to “appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants authorized by the board . . . [and to] suspend or dismiss for immorality, misconduct in the office, ... or whenever, in the opinion of the board, the best interest of the school require it, superintendents, principals, teachers, or any other employees...” Similarly, a county board of education can also reassign and/or transfer teachers or classified personnel to a different position, school or grade if the board determines a transfer is needed, and the legislature also specifically provides that certain teachers and personnel have a right to contest the board’s decision by a hearing before the board. See Alabama Code (1975) §§ 16-24C-7 & 16-24C-8.

118. The Alabama State Board of Education has further limited the State Superintendent's Authority under Ala. Admin. Code. § 290-1-2-.03. Specifically, in accordance with his authority to review actions of county boards, the State Board of Education has provided that the State Superintendent "shall not have the authority to review actions and orders of county and city boards of education or county superintendents of education and city superintendents of schools in personnel matters." (emphasis added).

119. In addition, Ala. Admin. Code § 290-1-2-.03 provides that the State Superintendent may review "actions and orders in personnel matters," but only upon a "finding by the Statute Superintendent, made after investigation, that exigent circumstances affecting the education and education interest of the affected board require the State Superintendent's intervention in such matters." In addition, "any such finding by the State Superintendent, and an explanation of the basis for the finding, shall be submitted to the State Board of Education forthwith upon its issuance."

120. Assuming *arguendo* that the foregoing Administrative Code provision is lawful, the exception is extremely limited and unavailable in the instant circumstance because there has been no personnel action or order, and none of the remaining prerequisites have been satisfied.

121. Courts have also found that there is no authority granted to the State Superintendent to review matters pertaining to assigning a teacher from one school to another, because that authority is specifically granted to the local board under state statute. See Weaver v. Madison City Bd. of Educ., 947 F. Supp. 2d 1308, 1322-23 (N.D. Ala. 2013).

122. The Alabama Attorney General has also rendered an opinion on point, that provides: "unless an agreement is reached regarding personnel that decides otherwise, staff members in the newly formed city systems will remain with that system in order not to

jeopardize their positions.” 1992 WL 535509.

123. Finally, Alabama Code (1975) § 16-24C-4(e) further demonstrates that the default rule that applies in the absence of agreement is that that employees will remain with the newly formed school (i.e., “employees whose employer changes by virtue of . . . district formation . . . shall retain tenure or nonprobationary status and service credit attained by virtue of employment with the predecessor employer”).

124. There exists a justiciable controversy between the Baldwin County Board of Education and Defendant Mackey and Gulf Shores City Board concerning the Baldwin County Board of Education’s right to determine matters related to the management of personnel.

125. This Honorable Court possesses jurisdiction under the laws of the State of Alabama to issue a declaratory judgment with respect to the rights privileges and entitlements of the parties relative to the respective authority of the parties related to the management of personnel as described herein.

126. A failure to file this action will result in the unlawful exercise of authority by the State Superintendent in matters concerning personnel that Alabama law vests in the authority of the Baldwin County Board of Education.

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education prays that this Honorable Court to enter a declaratory judgment and grant any additional and further relief that the Plaintiff may be entitled to in this cause, including, but not limited to:

- (a) A specific declaration that the State Superintendent lacks the authority to create, impose or order a seniority-based selection process for personnel as set forth in the State Superintendent’s final decision;
- (b) A specific declaration that the State Superintendent’s final decision, is null and void to the extent that it purports to create, impose or order a seniority based selection process for personnel;
- (c) Injunctive relief on behalf of the Plaintiff Ordering that the April 1, 2019

and April 15, 2019 deadlines contained in Paragraph 3(A) of the State Superintendent's final decision be held in abeyance until such time as this controversy can be resolved either by agreement of the parties or by further Order of this Honorable Court; and,

- (d) Any and all further and different relief to which the Plaintiffs maybe entitled to in this cause.

## COUNT V

### WRIT OF MANDAMUS

127. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 126 as if fully set forth herein.

128. Plaintiff alleges that Mackey acted willfully, knowingly, maliciously, in bad faith, beyond his authority, and/or under a mistaken interpretation of the law and is not immune from civil action.

129. Defendant Mackey does not have the authority, under Alabama Code (1975) §§ 16-4-4 and 16-4-8 to unilaterally order the Baldwin County Board of Education to enter into the Agreement, specifically to order the Baldwin County Board of Education to agree to the terms outlined in Counts I through IV.

130. The general supervision statutes do not give carte blanche authority to the State Superintendent. Instead, the statutes allow the State Superintendent to take action only after certain prerequisites have occurred, only as outlined by the State Department of Education regulations, and when such authority has not been specifically granted by the Legislature to the local boards.

131. Mackey's acts and omissions, as set forth in Count I, were in error and contrary to the statutes, arbitrary, beyond their authority and/or under a mistaken interpretation of the law. As a matter of law, the Baldwin County Board of Education is entitled to all Foundation Program

funding through the end of the current fiscal year, being September 30, 2019.

132. Mackey's acts and omissions, as set forth in Count II, were in error and contrary to the statutes, arbitrary, beyond their authority and/or under a mistaken interpretation of the law. As a matter of law, the Baldwin County Board of Education is entitled to the distribution of Sales Tax revenue through the end of the current fiscal year, being September 30, 2019.

133. Mackey's acts and omissions, as set forth in Count III, were in error and contrary to the statutes, arbitrary, beyond their authority and/or under a mistaken interpretation of the law. As a matter of law, the Baldwin County Board of Education is entitled to contract for and/or make its own decisions regarding student attendance zones, student assignment, student admission, and student transportation.

134. In addition, Mackey has acted outside his authority under Alabama Code (1975) § 16-4-8 and failed to follow the State Board of Education's promulgated rules and regulations regarding Mackey's authority to review matters under § 16-4-8. Specifically, the State Superintendent intervened in this matter prior to any actions, orders, or agreements being entered into by either the Baldwin County Board of Education or the Gulf Shores City Board.

135. Further, under the Rules and Regulations promulgated by the State Board of Education at Ala. Admin. Code §§ 290-1-2-.05, "upon a determination that a review of an action" is required, the State Superintendent shall, state the reasons for the review, conduct an investigation to obtain all relevant facts regarding the reasons for the review, report the results of the review to the affected party, review a written response by the county board of education, make a final order not later than ten work days after the receipt of the response, and issue a final order no later than (90) calendar days after the affected party has been notified of a proposed review.

136. As argued above and below, assuming *arguendo* that the review rules and regulations are authorized under the laws of the State of Alabama, the State Superintendent has failed to follow the procedural requirements for conducting a review of actions or orders of a local board. He has never given notice to either of the local boards that he has determined that a review is required. He has never stated the reasons for any review. He has not conducted any investigation to obtain all relevant facts, and his directives have been issued well beyond the ninety calendar day timeline.

137. For the foregoing reasons, the Baldwin County Board of Education seeks a Writ of Mandamus to compel Mackey to comply with state laws and/or the State Board of Education's own applicable policies and procedures regarding investigation of Board actions and orders, assuming that such an investigation is proper and authorized under the law.

138. Writ of mandamus is proper as the Baldwin County Board of Education a clear right to the relief sought; further there is no adequate remedy, and the Baldwin County Board of Education has properly invoked the jurisdiction of this Court. Mandamus is appropriate directing Mackey to follow the law as herein requested.

139. Mackey, by his acts and omissions, has failed to follow the non-discretionary mandated applicable statutes and regulations imposed upon him by law.

140. Mackey has failed to comply with the law, as well as his own rules, practices, policies, and procedure with regard to the Baldwin County Board of Education, thereby acting wrongfully and in violation of the laws of the State of Alabama by attempting to direct and order the Baldwin County Board of Education to enter into a settlement agreement regarding September Payroll, the distribution of Sales Tax revenues, student assignment, and student transportation.

141. The acts of Mackey toward the Baldwin County Board of Education, as alleged in this Complaint, were not in accordance with the laws of the State of Alabama.

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education prays that a Writ of Mandamus be issued by this Court directed to Defendant Mackey, commanding him to forthwith:

- (a) Comply with the laws of the State and Alabama and the State Board of Education's own applicable policies and procedures;
- (b) Recognize that the Baldwin County Board of Education is entitled to receive all Sales Tax revenue and Foundation Program funding through the end of the current fiscal year, being September 30, 2019;
- (c) Allow the Baldwin County Board of Education to make its own decisions regarding student assignment, student admission and student transportation;
- (d) Set this matter for hearing on preliminary injunctive relief and grant such relief as is proper; and
- (e) Provide the Baldwin County Board of Education with such other, further and different relief as may be just and proper, including the cost of this action.

### **COUNT VI**

#### **MANDAMUS ON ACTIONS UNDER §§ 16-4-4 AND 16-4-8 REGARDING PERSONNEL**

142. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 141 as if fully set forth herein.

143. Plaintiff alleges that Mackey acted willfully, knowingly, maliciously, in bad faith, beyond his authority, and/or under a mistaken interpretation of the law and is not immune from civil action.

144. Mackey's acts and omissions, as set forth in Count IV, were in error and contrary to the statutes, arbitrary, beyond their authority and/or under a mistaken interpretation of the law. As a matter of law, the Baldwin County Board of Education is entitled to contract for and/or

make its own decisions regarding matters pertaining to personnel.

145. In addition, Mackey has failed to follow the rules and regulations promulgated by the State Board of Education in intervening and issuing directives regarding personnel. Specifically, Ala. Admin. Code § 290-1-2-.03 states that the State Superintendent may only “review such actions and orders in personnel matters upon a finding by the State Superintendent, made after investigation, that exigent circumstances affecting the education and education interest of the affected board require the State Superintendent’s intervention in such matters.” In addition, “any such finding by the State Superintendent, and an explanation of the basis of the finding, shall be submitted to the State Board of Education upon its issuance.”

146. Put another way, in matters pertaining to personnel, the authority of the State Superintendent is directly tied to, and limited to specific issues: “exigent circumstances affecting the education and education interest of the affected board,” and under a specific process where an investigation and findings are to occur, with submission of those findings to the State Board of Education.

147. As argued above, Mackey intervened in this matter prior to any acts from either of the local boards. In addition, he has continued to issue directives regarding personnel matters, without providing any explanation as to what legal authority exists for him to intervene on matters of personnel. In contravention to the State Board of Education’s own rules and procedures, Mackey has not submitted his finding, or an explanation thereof, regarding the exigent circumstances to the State Board of Education.

148. For the foregoing reasons, the Baldwin County Board of Education seeks a Writ of Mandamus to compel Mackey to comply with state laws, and/or the State Board of Education’s own applicable policies and procedures regarding investigation of Board actions and

orders pertaining to personnel.

149. Writ of mandamus is proper as the Baldwin County Board of Education has a clear right to the relief sought; further there is no adequate remedy, and the Baldwin County Board of Education has properly invoked the jurisdiction of this Court. Mandamus is appropriate directing the Defendant Mackey to follow the law as herein requested.

150. Defendant Mackey, by his acts and omissions, has failed to follow the non-discretionary mandated applicable statutes and regulations imposed upon him by law.

151. Mackey has failed to comply with the statutes, as well as his own rules, practices, policies, and procedure with regard to the Baldwin County Board of Education, thereby acting wrongfully and in violation of the laws of the State of Alabama by attempting to direct and order the Baldwin County Board of Education to enter into a settlement agreement regarding personnel issues.

152. The acts of Mackey toward the Baldwin County Board of Education, as alleged in this Complaint, were not in accordance with the laws of the State of Alabama.

WHEREFORE, PREMISES CONSIDERED, the Baldwin County Board of Education prays that a Writ of Mandamus be issued by this Court directed to Defendant Mackey, commanding him to forthwith:

- (a) Comply with the laws of the State and Alabama and the State Board of Education's own applicable policies and procedures;
- (b) Allow the Baldwin County Board of Education to make its own decisions regarding personnel;
- (c) Set this matter for hearing on preliminary injunctive relief and grant such relief as is proper; and
- (d) Provide the Baldwin County Board of Education with such other, further and different relief as may be just and proper, including the cost of this action.

**COUNT VII****INJUNCTIVE RELIEF**

153. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 152 as if fully set forth herein.

154. There exists a justiciable controversy between the Baldwin County Board of Education and Mackey concerning Mackey's right to order that the Baldwin County Board of Education take the above described actions. This Court has jurisdiction of this Count under the laws of the state of Alabama.

155. Mackey has a legal and/or ministerial duty to comply with all applicable state laws.

156. Mackey, by his acts and omissions has failed to follow the non-discretionary applicable statutes and policies imposed upon him by the law and by the Alabama State Department of Education.

157. Mackey has failed to comply with the statutes, as well as the State Board of Education's own rules, practices, policies and procedures regarding his above directives, thereby acting wrongfully and in violation of the laws of the State of Alabama by attempting to order the Baldwin County Board of Education to enter into a settlement agreement regarding the above terms outlined in Counts I through IV.

158. Mackey's acts and omissions, as set forth in this Complaint, were in error and contrary to the statutes, arbitrary, beyond his authority, and/or under a mistaken interpretation of the law. As a matter of law, the Baldwin County Board of Education is entitled to the 2018-2019 Foundation funds, is entitled to all Sales Tax revenue based on the fiscal calendar year, is entitled to determine and agree to its own terms regarding student attendance zones, student admission,

student transportation, and personnel.

159. Defendant Mackey's willful violation of this duty will cause irreparable damage to the Baldwin County Board of Education.

160. The Baldwin County Board of Education seeks injunctive relief to prevent Defendant Mackey from seeking any enforcement recourse against the Baldwin County Board of Education and/or the Baldwin County Board of Education's Superintendent Mr. Eddie Tyler.

161. The harm to the Baldwin County Board of Education outweighs any potential harm to Defendants and granting an injunction will not constitute a disservice to the public's interest.

WHEREFORE, the above considered, the Baldwin County Board of Education request that upon a hearing of this matter the Court will enter injunctive relief providing:

- (a) That Mackey has failed to comply with the State Board of Education's applicable policies and procedures.
- (b) That Mackey has acted outside his authority and failed to follow the statutes and laws of the State of Alabama.
- (c) That Mackey be prevented from seeking any enforcement recourse of his final order against the Baldwin County Board of Education and the Baldwin County Board of Education's Superintendent, Mr. Eddie Tyler.
- (d) That the Baldwin County Revenue Commissioner shall distribute all Foundation moneys for 2018-2019 school year to the Baldwin County Board of Education through the end of the fiscal year- September 30, 2018.
- (e) That the Baldwin County Commission shall distribute all Sales Tax revenue to the Baldwin County Board of Education in accordance with the fiscal year.
- (f) That the Baldwin County Board of Education be allowed to exercise their authority to determine and agree to their own terms regarding student attendance zones, student admission, student transportation, and personnel.
- (g) Set this matter for hearing on preliminary injunctive relief and grant such

relief as is proper.

- (h) Such other, further and different relief as may be just and proper, including costs of this action.

## COUNT VIII

### WRIT OF CERT

162. The Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 161 as if fully set forth herein.

163. It is well settled that decisions of governmental boards and governmental officers (check) are subject to judicial review by a petition for a writ of certiorari. Alexander v. Dothan City Board of Educ., 891 So.2d 323, 326 (Ala. Civ. App. 2004).

164. The Baldwin County Board of Education contends that Defendant Mackey acted ultra vires by attempting to order the Baldwin County Board of Education to enter into the Agreement as outlined in Counts I through IV.

165. Defendant Mackey alleges that he has the power to act under the laws of the State of Alabama in all matters contained herein, but he has failed to demonstrate that he has any authority to divest the Baldwin County Board of Education of its property right and statutory authority to enter into agreements, to receive Foundation funds and tax revenue as outlined in the law, and to determine student attendance zones, student admission, student assignment, student transportation and personnel issues.

166. It is therefore proper to review the legality of the proceedings regarding Mackey's review, "investigation," and directives to the Baldwin County Board of Education.

167. The Baldwin County Board of Education respectfully requests that this Honorable Court will issue a writ of certiorari and review Defendant Mackey's decision to order the Baldwin County Board of Education to enter into the above described agreement.

168. Because Defendant Mackey has acted willfully, knowingly, maliciously, in bad faith, beyond his authority, and/or under a mistaken interpretation of the law, he is not immune from suit.

WHEREFORE, the above considered, the Baldwin County Board of Education respectfully requests that this Honorable Court accept this complaint for a writ of certiorari, to review the decision, actions, and/or statements of the Defendant Mackey and determine that:

- (a) The Baldwin County Board of Education is entitled to the relief described above in the preceding paragraphs, including without limitation the reversal of Defendant Mackey's directive ordering the Baldwin County Board of Education to enter into the unlawful agreement since it is arbitrary, not authorized in the law, based upon an error or mistaken interpretation of the law, and/or not supported by the evidence in this cause; and
- (b) The Baldwin County Board of Education further prays that they be awarded any other and further relief as well as any other orders and judgments to which they may be entitled under the facts set out above, including an award of costs.

Respectfully submitted, this the 15<sup>th</sup> day of February, 2019.

/s/ Don Beebe  
 DON BEEBE (BEE004)  
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**DEFENDANTS ARE TO BE SERVED VIA-CERTIFIED MAIL TO:**

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State Superintendent of Education  
Alabama State Department of Education  
P.O. Box 302101

Gulf Shores City Board of Education  
P.O. Box 3908  
Gulf Shores, AL 36547

Baldwin County Commission  
c/o The Honorable Charles F. Gruber, Chairman  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507